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To Brenda Cook/R6/USEPA/US@EPA

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Subject (9087977) TCEQ VCP and Defasco

Brenda,

Wren told me yesterday that because Delfasco has declared bankruptcy, TCEQ is not able to terminate them from the VCP. This is because when a facility enters into the VCP, it is essentially entering into a contract with TCEQ. Under bankruptcy law, when a business declares bankruptcy, all contracts are frozen until the bankruptcy is resolved.

Wren's question - Is there anything to stop EPA Superfund from conducting a PA and SI at the site even though it is still in the VCP? Is there a written agreement between EPA Superfund and TCEQ that says EPA will not investigate a site while it is in their VCP? My thoughts are that we can proceed with the PA and SI. TCEQ has asked EPA to conduct these investigations; therefore, we should be able to move forward. In addition, the VCP is associated with the State's RCRA Program which really does not impact EPA's Superfund Program (i.e., two different programs evaluating a site in different ways).

What are your thoughts? I do not see there being a problem with our investigations.

Thanks,
Bret